UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DIETEC CO., LTD.,

Plaintiff,

v.

OSIRIUS GROUP, LLC,

Defendant.

Case No. 17-cv-10372

Honorable Laurie J. Michelson

/

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DEFENDANT OSIRIUS GROUP, LLC'S MOTION TO DISMISS

Defendant Osirius Group, LLC ("Osirius"), by and through its attorneys, Miller, Canfield, Paddock and Stone, PLC, moves to dismiss Counts II and III of

Plaintiff's Complaint pursuant to Federal Rules of Civil Procedure 12(b)(6), and in support of its Motion to Dismiss, states as follows:

1. In support of this Motion to Dismiss, Osirius relies on the incorporated Brief in Support.

2. Pursuant to Local Rule 7.1(a), Osirius's counsel contacted Plaintiff's counsel on April 3, 2017, to obtain concurrence in this Motion. Counsel for Plaintiff refused to concur in the relief sought.

WHEREFORE, Defendant Osirius Group, LLC respectfully requests that this Honorable Court grant its Motion to Dismiss, dismiss Counts II and III of the complaint with prejudice, order such other and further relief the Court deems appropriate, and award Defendant its costs and attorneys' fees wrongfully incurred.

Respectfully submitted,

MILLER, CANFIELD, PADDOCK & STONE PLC

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Dated: April 7, 2017

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DEFENDANT OSIRIUS GROUP, LLC'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS

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INTRODUCTION

Plaintiff Dietec Co. Ltd. ("Dietec") has filed a fatally flawed complaint against Defendant Osirius Group, LLC ("Osirius"). In its complaint, Dietec asserts claims for breach of contract (Count I), tortious interference with contractual relations/business expectations (Count II) and unjust enrichment (Count III). Taking all well-pleaded factual allegations as true, Dietec fails to state a claim for tortious interference (Count II) and unjust enrichment (Count III). This is a breach of contract case, nothing more. Accordingly, the Court should dismiss Counts II and III of the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

STATEMENT OF FACTS

Plaintiff Dietec is a South Korean corporation with its principal place of business in Yangsan City, South Korea. (Complaint, ¶4).[1] Dietec claims to be a "world leader in the manufacture of precision automotive press dies" and produces products used by automotive companies. (*Id.*, ¶8).

Defendant Osirius is a Michigan limited liability corporation with its principal place of business in Troy, Michigan. (*Id.*, ¶5). Osirius is an automotive production consultant company. (*Id.*, ¶9).

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[1] In a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), all well-pleaded facts are accepted as true. However, Osirius does not agree with the facts or legal conclusions alleged in the complaint.

Dietec alleges that in 2014, Groupe Renault ("Renault"), a French automobile manufacturer, hired Osirius to assist in the development of a new SUV, codenamed Renault HHA (i.e. the "Project"). (*Id.*). On October 6, 2014, Osirius and Dietec entered into three Purchase Orders, Nos. OSI-RN00072, OSI-RN00070, and OSI-RN00128, in which Dietec allegedly agreed to manufacture and supply tooling equipment for the Project for $9,040,966 (the "Purchase Orders"). (*Id.*, ¶10). Dietec refers to the Purchase Orders as "the Contract" throughout its complaint. (*Id.*). According to Dietec, the Purchase Orders provided the following payment schedule:

- 10% of contract amount upon submission of invoice;
- 25% after casting;
- 20% after first sample;
- 10% 60 days after first sample;
- 25% after buy off in Korea; and
- 10% after Renault final approval.

(*Id.*, ¶11). Dietec alleges that "[d]uring the course of the project, Osirius was chronically late in meeting its payment obligations" and that "Osirius's continuing inability to make timely payments caused Dietec to experience difficulties obtaining the raw materials far enough in advance to prevent delays in deliveries of the Equipment." (*Id.*, ¶¶12, 16).

Dietec claims that "[w]hen Osirius's final payment to Dietec, in the amount of $539,404.21, came due, Osirius informed Dietec that it would be make [sic] such payment, claiming that Osirius had already paid Dietec the total Contract amount of $9,040,966." (*Id.*, ¶19). Dietec alleges that "Osirius's refusal to make the final payment, together with its previous four delinquent payments, caused Dietec to experience a five-month delay in its manufacture of the Equipment." (*Id.*, ¶22). Dietec further alleges that "[a]s a result of the delay caused by Osirius and Osirius's representations to Renault, falsely asserting that Dietec was responsible for the delay, Dietec's good will and business reputation were irreparable [sic] and substantially damaged." (*Id.*, ¶23).

Dietec asserts three claims against Osirius: (i) breach of contract; (ii) tortious interference with contractual relations and/or business expectancy; and (iii) unjust enrichment. (*Id.*, ¶¶32-53). For Count I (breach of contract), Dietec alleges Osirius breached the Purchase Orders by failing to pay the remaining $539,404.21 allegedly owed under the payment schedule in the Purchase Orders. (*Id.*, ¶¶34-37).

For Count II (tortious interference with contractual relations and/or business expectancy), Dietec alleges that it had a "valid business relationship and expectancy with Renault and Nissan" and that "[a]s a result of Osirius's failure to comply with the terms of the [Purchase Orders], including its chronic, intentional, and malicious refusal to pay Dietec and its misrepresentations to Renault regarding

Dietec's performance of the [Purchase Orders], Dietec's relationship with Renault and Nissan has been all but destroyed." (*Id.*, ¶¶39, 42). Dietec claims it "recently lost a project with Renault worth approximately $6 million" and therefore has suffered damages in the amount of at least $6 million. (*Id.*, ¶¶43, 46).

For Count III (unjust enrichment), Dietec alleges that "Dietec's manufacture and delivery of the Equipment conferred a benefit on Osirius" and that it is entitled to payment of the remaining $539,404.21 allegedly owed under the payment schedule in the Purchase Orders. (*Id.*, ¶¶48, 51, 53).

STANDARD OF REVIEW

"[T]o survive a motion to dismiss, a complaint must contain (1) 'enough facts to state a claim to relief that is plausible,' (2) more than 'a formulaic recitation of a cause of action's elements,' and (3) allegations that suggest a 'right to relief above a speculative level.'" *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)). The Supreme Court has made clear that a court should not accept non-factual matter or "conclusory statements" set forth in a complaint as true. *See Ashcroft v. Iqbal*, 556 U.S 662, 686 (2009).

Instead, a court must follow a two-step approach in assessing the sufficiency of a complaint in the face of a Rule 12(b)(6) motion. *See id.* at 680-81. First, the court must distinguish between facts, on the one hand, and "mere conclusory statements" or legal conclusions on the other hand; the latter are not entitled to the presumption of truth and must be disregarded. *Id.* at 678-79. Second, the court must "consider the factual allegations in [the complaint] to determine if they plausibly suggest an entitlement to relief." *Id.* at 681. A plaintiff must show "more than a sheer possibility that a defendant acted unlawfully," and cannot rely on mere "labels and conclusions" to support a claim. *Id.* If the plaintiff's pleadings "have not nudged [his or her] claims across the line from conceivable to plausible, [the] complaint must be dismissed." *Twombly*, 550 U.S. at 570.

Moreover, a court must consider the strength of competing alternative lawful explanations for a party's conduct and dismiss the complaint if those explanations are more plausible. *See 16630 Southfield Ltd. P'Ship.*, 727 F.3d 502, 504 (6th Cir. 2013). As the Supreme Court has explained, this stringent pleading standard serves a "vital practical function: It prevents plaintiffs from launching a case into discovery – and from brandishing the threat of discovery during settlement negotiations – 'when there is no reasonable likelihood that [they] can construct a claim from the events related in the complaint.'" *Id.* (quoting *Twombly*, 550 U.S. at 558).

ARGUMENT

I. Count II of the Complaint (Tortious Interference) Should Be Dismissed

A. Elements of a Tortious Interference Claim under Michigan law

To state a claim for tortious interference with contractual relations and/or business expectancy under Michigan law,[2] a plaintiff must allege:

> (1) the existence of a valid business relation (not necessarily evidenced by an enforceable contract) or expectancy; (2) knowledge of the relationship or expectancy on the part of the defendant interferer; (3) an intentional interference inducing or causing a breach or termination of the relationship or expectancy; and (4) resulting damage to the party whose relationship or expectancy has been disrupted.

Wausau Underwriters Ins. Co. v. Vulcan Dev., Inc., 323 F.3d 396, 404 (6th Cir. 2003) (quoting *Clark v. W. Shore Hosp.*, 16 F. App'x 421, 430 (6th Cir. 2001)). "To maintain a cause of action for tortious interference, the plaintiff[] must establish that the defendant was a 'third party' to the contract or business relationship." *Reed v. Mich. Metro Girl Scout Council*, 201 Mich. App. 10, 13 (1993).

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[2] Dietec appears to only be asserting a claim of tortious interference with business expectancy, not tortious interference with contract, because Dietec does not allege the existence of an existing contract between Dietec and Renault/Nissan that was breached or interfered with. (Compl., ¶39) ("Dietec had a valid business relationship and expectancy with Renault and Nissan.").

B. Dietec Fails to Sufficiently Plead a Valid Business Expectancy

As to the first element, a plaintiff must plead a valid business expectancy, and "[t]he expectancy must be a reasonable likelihood or probability, not mere wishful thinking." *Trepel v. Pontiac Osteopathic Hosp.*, 135 Mich. App. 361, 377 (1984). "If the ground of complaint is that [the plaintiff] was about to make a contract," he is required to go further and show that he was not only "about to, but would, but for the malicious interference of defendants, have entered into the contract." *Grand Rapids Plastics, Inc. v. Lakian*, 188 F.3d 401, 408 (6th Cir. 1999). Indeed, the Sixth Circuit has recognized that a past business relationship alone does not create a reasonable expectancy. *Id.* at 408 ("The fact that Kaikyo-Decoma hired Grand Rapids to do some work in 1990 did not indicate it would hire Grand Rapids for the 1994 or 1998 work.").

Here, Dietec solely makes a conclusory allegation that it "had a valid business relationship and expectancy with Renault and Nissan." (Compl., ¶39). Dietec also alleges that it "recently lost a project with Renault worth approximately $6 million." (*Id.*, ¶43). Dietec's threadbare allegations do not sufficiently plead a reasonable likelihood or probability of business with Renault or Nissan. Moreover, the thrust of Dietec's claim is that it "recently lost a project with Renault" worth $6 million. (*Id.*, ¶43). But Dietec has not alleged that it was not only "about to, but would, but for the malicious interference of defendants, have entered into the contract." *Grand Rapids Plastics,* 188 F.3d at 408. Dietec's complaint is simply devoid of any facts sufficient to show a valid business expectancy with Renault or Nissan.

The more plausible explanation is that Dietec is simply trying to find a larger damage number to affix to its modest breach of contract case to assist its negotiating position. This, or course, is not the proper purpose of pleadings and is the precise reason why the Supreme Court decided *Twombly* and *Iqbal* the way it did. Properly narrowing Dietec's complaint in accordance with the appropriate legal standards will be more helpful in the parties' attempts to reach a principled resolution of this matter.

C. Dietec Fails to Sufficiently Plead Osirius's Knowledge of the Business Relationship or Expectancy with Renault and Nissan

Dietec also fails to allege Osirius's knowledge of Dietec's business relationship or expectancy with Renault and Nissan. While Dietec does allege in paragraph 44 of the complaint the legal conclusion that "Osirius knew of Dietec's relationship with Renault and Nissan" – this allegation is nothing more than a bare recitation of the elements devoid of facts that is not permitted under the *Twombly/Iqbal* pleading standard. *See e.g. Hiller v. HSBC Finance Corp.*, 2014 WL 656258, at *6 (E.D. Mich. 2014) (Court can freely disregard a legal conclusion under *Twombly* and *Iqbal*). Dietec's threadbare legal conclusion for the element of knowledge is insufficient as a matter of law.

D. Dietec Fails to Sufficiently Plead Intentional Interference

As to the third element, a plaintiff "must allege the intentional doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship." *Feldman v. Green*, 138 Mich. App. 360, 369 (1984)). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *Badiee v. Brighton Area Sch.*, 265 Mich. App. 343, 367 (2005). An act that is wrongful per se is an "act that is inherently wrongful or an act that can never be justified under any circumstances." *Id.*; *Prysak v. R.L. Polk Co.*, 193 Mich. App. 1, 2-3 (1992). Thus, to allege a wrongful per se or improper act, a plaintiff must allege the interferer did something illegal, unethical or fraudulent. *Weitting v. McFeeters*, 104 Mich. App. 188, 198 (1981). Otherwise, a plaintiff can demonstrate that the defendant "committed a lawful act with malicious intent[.]" *Badiee*, 695 N.W.2d at 539; *see also Chambers v. City of Detroit*, 786 F. Supp. 2d 1253, 1274-75 (E.D. Mich. 2011).

"Where defendant's actions were motivated by legitimate business reasons, its actions would not constitute improper motive or interference." *Wausau Underwriters Ins. Co. v. Vulcan Development, Inc.*, 323 F.3d 396, 404 (6th Cir. 2003). "Furthermore, where a defendant has a contractual right, the 'exercise of that right cannot, as a matter of law, constitute a per se wrongful act.'" *Saab Auto AB v. General Motors Co.*, 770 F.3d 436, 442 (6th Cir. 2014).

Here, in support of its tortious interference claim, Dietec alleges that Osirius (1) breached the Purchase Orders by failing pay Dietec $539,404.21, and (2) that Osirius made "misrepresentations to Renault regarding Dietec's performance of the [Purchase Orders]." (*Id.*, ¶¶39, 42). Because Dietec does not allege a *per se* wrongful act, its complaint must plead, with specificity, *affirmative acts* by the defendant that corroborate the improper motive of the interference. *Warrior Sports, Inc. v. Nat'l Collegiate Athletic Ass'n*, 623 F.3d 281, 287 (6th Cir. 2010); *see also Rockwell Medical, Inc. v. Yocum*, 76 F. Supp. 3d 636, 648-649 (E.D. Mich. 2014) ("plaintiff must demonstrate, **with specificity**, affirmative acts by the interferer which corroborate the unlawful purpose of the interference.") (emphasis added). Simply alleging acts and the conclusion of malice, as Dietec does here, is not enough. *See Indus Concepts & Engineering, LLC v. Superb Industries, Inc.*, 2016 WL 3913711, at *9 (E.D. Mich. July 20, 2016) (Michelson, J.) (dismissing tortious interference claim because plaintiff failed to allege facts showing defendant acted with malicious intent).

For example, in *Warrior Sports*, the plaintiff, a sports equipment manufacturer, accused the NCAA of tortiously interfering with business expectancies by changing rules regarding lacrosse sticks. *Warrior Sports*, 623 F.3d at 283-84. The Sixth Circuit affirmed dismissal of the tortious interference claim because “Warrior fail[ed] to allege specific, affirmative actions by the NCAA that corroborate[d] its claim of malice.” *Id.* According to the Sixth Circuit, the plaintiff's “vague assertion that ‘in deciding to change the rules, [the NCAA] appears to have acted for improper and anticompetitive reasons under the influence of one or more of the competitors of [Warrior],’ lacks the specificity required by Michigan law.” *Id.* (internal citations omitted). Because there were no allegations in the complaint to support Warrior's claim that the NCAA's rule changes were motivated by “malice,” the tortious interference claim was affirmed as properly dismissed. *Id.*

Likewise, the Sixth Circuit’s analysis in *Elias v. Fed. Home Loan Mortg. Corp.*, 581 F.App'x 461 (6th Cir. 2014) further shows why Dietec’s complaint does not satisfy the *Iqbal/Twombly* standard. The plaintiffs in *Elias* claimed that Freddie Mac intentionally interfered with their business expectancies by adding the plaintiffs to its “Exclusionary List,” which lists businesses that Freddie Mac suspects of fraud or practices that are risky to Freddie Mac. *Id.* at 464. The Sixth Circuit found, however, that those allegations were deficient for two principal reasons. *Id.* First, the plaintiffs admitted that Freddie Mac had a legitimate business reason for adding them to the Exclusionary List. *Id.* at 465. Second, the plaintiffs did not allege facts to show that Freddie Mac acted with malice because there were no allegations that Freddie Mac knowingly treated the plaintiffs differently than other businesses. *Id.* at 465-66. As such, the Court could not infer that the otherwise lawful actions were taken "for the purpose of invading ... the business relations of another." *Id.* at 454. The Sixth Circuit therefore concluded that the plaintiffs could not plausibly allege a claim for tortious interference. *Id.*

Similar to *Warrior Sports* and *Elias,* Dietec has not pleaded, with specificity, affirmative acts from which the Court can infer that Osirius acted with malice. The allegation that Osirius made "misrepresentations to Renault regarding Dietec's performance of the [Purchase Orders]" is not alleged with specificity. (Compl., ¶¶39, 42). Dietec simply fails to specify the alleged misstatements, the identity of the speakers, when and where the statements were made, or why the alleged statements were incorrect, and therefore, Dietc fails to support the reasonable inference that Osirius acted maliciously. *See Collins v. Choi Kwang Do Martial Arts Intern. Inc.*, 2011 WL 3566615, at *5 (E.D. Mich. August 15, 2011) (dismissing tortious interference claim for failure to allege improper interference because plaintiff failed to allege how defendant's alleged statement that belts were "no good" was improper).

E. Dietec Fails to Sufficiently Plead Causation

Dietec has also failed to allege how Osirius's purported intentional interference was the cause of the termination of Dietec's relationship or business expectancy with Renault and Nissan. Dietec alleges that it recently lost a project with Renault worth approximately $6 million (Complaint, ¶43), but fails to allege any facts showing that the intentional interference – Osirius's alleged breach of the Purchase Orders by failing pay Dietec $539,404.21 and Osirius's alleged "misrepresentations to Renault regarding Dietec's performance of the [Purchase Orders]" – were the cause-in-fact of Dietec losing the $6 million contract. (Complaint, ¶¶39, 42).

For example, Dietec does not allege that Renault has indicated that the $6 million project was not awarded to Dietec because of the purported misrepresentations of Osirius. *See Midfield Concession Enterprises, Inc. v. Areas USA, Inc.*, 130 F. Supp. 3d 1122, 1145 (E.D. Mich. 2015) (granting summary judgment on tortious interference claim because "negative gossip" was "merely attenuated speculation that is insufficient to meet Areas' burden of showing that it would have been awarded any project, concession, or opportunity from the airport absent Mashni's alleged tortious interference.").

Accordingly, because Dietec has failed to state a claim for tortious interference, the Court should dismiss Count II of the complaint.

II. Count III of the Complaint (Unjust Enrichment) Should Be Dismissed

Count III fails to state a claim for unjust enrichment. Under Michigan law, to allege a claim for unjust enrichment, "a plaintiff must demonstrate (1) the defendant's receipt of a benefit from the plaintiff and (2) an inequity to plaintiff as a result." *AFT Mich. v. Michigan*, 303 Mich. App. 651, 660-61 (2014). "Courts, however, may not imply a contract if the parties have an express contract covering the same subject matter." *Id.* In other words, "[w]here the parties have an enforceable contract and merely dispute its terms, scope, or effect, one party cannot recover for . . . unjust enrichment." *Terry Barr Sales Agency, Inc. v. All-Lock Co.*, 96 F.3d 174, 181 (6th Cir. 1996).

Here, for its breach of contract claim, Dietec alleges Osirius breached the Purchase Orders by failing to pay the remaining $539,404.21 allegedly owed under the payment schedule in the Purchase Orders. (Complaint, ¶¶34-37). For its unjust enrichment claim, identical to its breach of contract claim, Dietec alleges that "Dietec's manufacture and delivery of the Equipment conferred a benefit on Osirius" and that it is entitled to payment of the remaining $539,404.21 allegedly owed under the payment schedule in the Purchase Orders. (*Id.*, ¶¶48, 51, 53). Osirius does not dispute that the parties entered into the Purchase Orders, it disputes the terms, scope, and effect of the Purchase Orders, as well as Dietec's contention that Osirius breached the Purchase Orders. Accordingly, Count III should be dismissed.

III. Counts II and III Should Be Dismissed Because Dietec Does Not Allege A Separate and Distinct Duty

Under Michigan law, a tort claim may not be pursued by contracting parties unless the tort claim alleges the "violation of a legal duty *separate and distinct* from the contractual obligation." *Fultz v. Union-Commerce Assocs.*, 470 Mich. 460, 466 (2004) (quoting *Rinaldo's Const. Corp. v. Mich. Bell Tel. Co.*, 454 Mich. 65, 84 (1997)) (emphasis added); *see also Hart v. Ludwig*, 347 Mich. 559, 565-66 (1956).[3] Thus, "a tort action will not lie when based solely on the nonperformance of a contractual duty." *Fultz*, 470 Mich. at 466. The rule reflects the common sense notion that "it is no tort to breach a contract," *Battista v. Lebanon Trotting Assoc.*, 538 F.2d 11, 117 (6th Cir. 1976), and the rule prevents plaintiffs from "import[ing] tort claims into contract cases by reformulating a breach of contract claim in tort language." *Wrench LLC v. Taco Bell Corp.*, No. 1:98-CV-45, 2003 WL 21653410, at *2 (W.D. Mich. May 1, 2003).

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[3] This principle is sometimes referred to as the *Hart* doctrine based on the seminal Michigan Supreme Court case, *Hart v. Ludwig*, and is also referred to as the "economic loss doctrine" within the context of the Uniform Commercial Code. *See e.g., DBI Investments, LLC v. Blavin*, ___ F. App'x ___, No. 14-1398, 2015 WL 1379680, at *7 (6th Cir. Mar. 26, 2015); *Sherman v. Sea Ray Boats, Inc.*, 251 Mich. App. 41, 50 (2002) ("case law provides that the principles of *Hart* evolved into the economic loss doctrine now applied to the UCC."). The *Hart* doctrine, or the economic loss doctrine, is not limited to just the UCC. *See Huron Tool & Eng'g Co. v. Precision Consulting Servs., Inc.*, 209 Mich. App. 365, 374 (1995) ("the economic loss doctrine … is not limited to the UCC.").

Thus, "[u]nder Michigan law, a defendant acting pursuant to a contract is liable in tort only if he or she 'owed a duty to the plaintiff that is separate and distinct from the defendant's contractual obligations.'" *Ram Int'l. Inc. v. ADT Security Services, Inc.*, 555 Fed. Appx. 493, 497 (6th Cir. 2014); *see also Indus*, 2016 WL 3913711, at *7 (E.D. Mich. July 20, 2016) (Michelson, J.) (same). Tort claims should be dismissed where the plaintiff does not identify a duty separate and distinct from the parties' agreement. *See e.g. C&L Ward Bros., Co. v. Outsource Solutions, Inc.*, No. 11-cv-1473, 2012 WL 3157005, at *3-4 (E.D. Mich. Aug. 3, 2012) (granting motion to dismiss fraud and other tort claims) (Steeh, J.); *USM Holdings, Inc. v. Simon*, 2016 WL 4396061, *15 (E.D. Mich. Aug. 18, 2016) (Steeh, J.) (same); *Indus*, 2016 WL 3913711, at *7 (E.D. Mich. July 20, 2016) (Michelson, J.) (same).

Similarly here, the complaint in this case alleges identical violations for breach of contract and the tortious interference and unjust enrichment claims. Dietec claims that Osirius breached the Purchase Orders by failing to pay the remaining $539,404.21 allegedly owed under the payment schedule in the Purchase Orders. (Complaint, ¶¶34-37). In support of its tortious interference claim, Dietec alleges that Osirius tortiously interfered with its business expectancy with Renault and Nissan "[a]s a result of Osirius's failure to comply with the terms of the [Purchase Orders], including its chronic, intentional, and malicious refusal to pay Dietec…" (*Id.*, ¶¶39, 42). As to its unjust enrichment claim, as explained above, Dietec asserts identical allegations from its breach of contract claim. (*Id.*, ¶¶48, 51, 53). In other words, Dietec alleges Osirius breached its alleged contractual duties as a basis for its non-contractual claims. There is no difference between the duties Dietec alleges were owed in contract and in tort. *Battista v. Lebanon Trotting Assoc.*, 538 F.2d 11, 117 (6th Cir. 1976) ("it is no tort to breach a contract"). Accordingly, for these reasons, Counts II and III of the complaint should be dismissed.

CONCLUSION

WHEREFORE, Defendant Osirius Group, LLC respectfully requests that this Honorable Court grant its Motion to Dismiss, dismiss Counts II and III of the complaint with prejudice, order such other and further relief the Court deems appropriate, and award Defendant its costs and attorneys' fees wrongfully incurred.

Respectfully submitted,

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Dated: April 7, 2017

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2017, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to all counsel of record:

Respectfully submitted,

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